PROJECT - 208

JUDICIAL ATTITUDES TOWARDS COMMUNITY SENTENCING OPTIONS

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Under Contract to

PLANNING AND RESEARCH BRANCH

Ontario MINISTRY OF CORRECTIONAL SERVICES

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ISBN 0-7743-7326-1

APRIL 1982

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ACKNOWLEDGEMENTS

The author wishes to acknowledge Mr.Patrick Madden and Dr. Andy Birkenmayer for their assistance given throughout the project. Their unfailing support, expertise, and good humour made the experience an enjoyable one. In addition, Associate Chief Judge H.A. Rice is to be especially thanked. He and Chief Judge F.A. Hayes provided invaluable cooperation for the study. Finally, the Ontario Provincial Court Judges themselves are to be thanked for their willingness to participate and offer their opinion. Their insightful comments as well as their judicial hospitality insured the success of the endeavor.

NOTE

One of the values of a general survey of this nature is the sampling of the wide range of opinion which exists. Therefore varying polarities of thought may be presented here which are not representative of the majority of judges' opinions on the matter. Because of this, caution should be made upon reading the report that singular comments from the judges not be assumed to comprise prevalent opinion. It was an explicit purpose of the survey to examine differing opinions on the alternatives programmes and had all judges provided similar uncritical remarks, there would have been little point to the exercise. A major result of the survey is that judges want feedback. It would have been contrary to the spirit of the increased communication desired to blunt or delete the feedback judges so willingly provided as an initial step in this process.

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1 INTRODUCTION

With current government demands for financial cutbacks and stringent budgeting, the Ministry of Correctional Services is under increasing pressure to economize in its expenditures for programmes. Re-assessment of existing programmes should be one aspect of financial evaluation. If programmes are not fulfilling their function as intended, then it is of value to investigate why in order that either the programmes or their functions be realigned.

One concern which stimulated the present report is the possibility that the recent trend toward the use of alternatives to incarceration programmes in the community is not resulting in fewer custodial sentences. Instead it appears that some individuals have been captured in a "widening of the net", becoming streamed into the correctional system when they might previously have been released from it. The concern may be justified in light of recent statistics indicating that intake to prison populations remains high, while intake to community programmes such as Temporary Absence and Probation is also increasing[1]. Figure 1 illustrates this situation with respect to probation.

Other than these long-standing alternative programmes, it is also questionable whether newer community-based alternative programmes are fulfilling the function of true alternatives to imprisonment. A recent one-year follow-up of the Community Service Order (CSO) program in Ontario (Herman, 1981, pg. 23) suggested it was not serving to divert individuals from probable incarceration because most offenders on a CSO assignment "had committed a single, non-serious offence such as theft under, at the time of sentencing". As the summary report concluded, "It was a major function of the CSO programme to help offset the critical overcrowding of inmates in correctional institutions.... Because of the low risk nature of this CSO client population, however, it is unlikely that the CSO option is constituting an alternative to incarceration too extensively." (Polonoski, 1981, pg. 61).

One possible explanation is that those responsible for sentencing to the alternative programmes may be sentencing "inappropriate" individuals, i.e., in cases that previously would have resulted in release, judges may be sentencing to an alternative for further supervision and control. Since it is the judges themselves that determine who the programmes process in terms of clientele, it is important to ask what factors they consider when deciding an alternative disposition as opposed to an incarcerative one.

It is logical that these factors relate to what the judges perceive to be the aims of sentencing generally. For example a judge who views the aim of sentencing to be primarily rehabilitative or reformative in nature might employ sentences

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[1] *From 1972 to 1978, the rate of adult persons under a probation supervision increased from 275 to 504 per 100,000 population.*

for alternatives to incarceration more frequently than if he believed punishment or general deterrence was its aim.

In addition, if judges are asked to list important offender and offence characteristics in sentencing decisions, it might be possible to determine why some cases receive an alternative disposition and others not. In certain cases the judge may think the offender needs more consideration than the offence. This perception may in turn influence his decision for an alternative sentence. In an earlier study on Ontario magistrates, Hogarth (1971) found that those who gave great weight to the reformation of offenders were more likely to emphasize the offender's characteristics and his needs rather than the offence (pg. 298).

Finally, judges should be asked directly what they think about alternative programmes; how they think existing programmes in their jurisdictions are functioning? Are there problems with availability, implementation, feedback? Knowledge about the actual mechanics of their operation may be of more relevance to the judge in sentencing than the importance he places on any belief about their purpose. If a programme such as a CSO or Temporary Absence Programme (TAP) has a local reputation for inefficiency or ineffectiveness, then a judge in that area may be less likely to utilize the alternative, even though he strongly believes in reformation or rehabilitation.

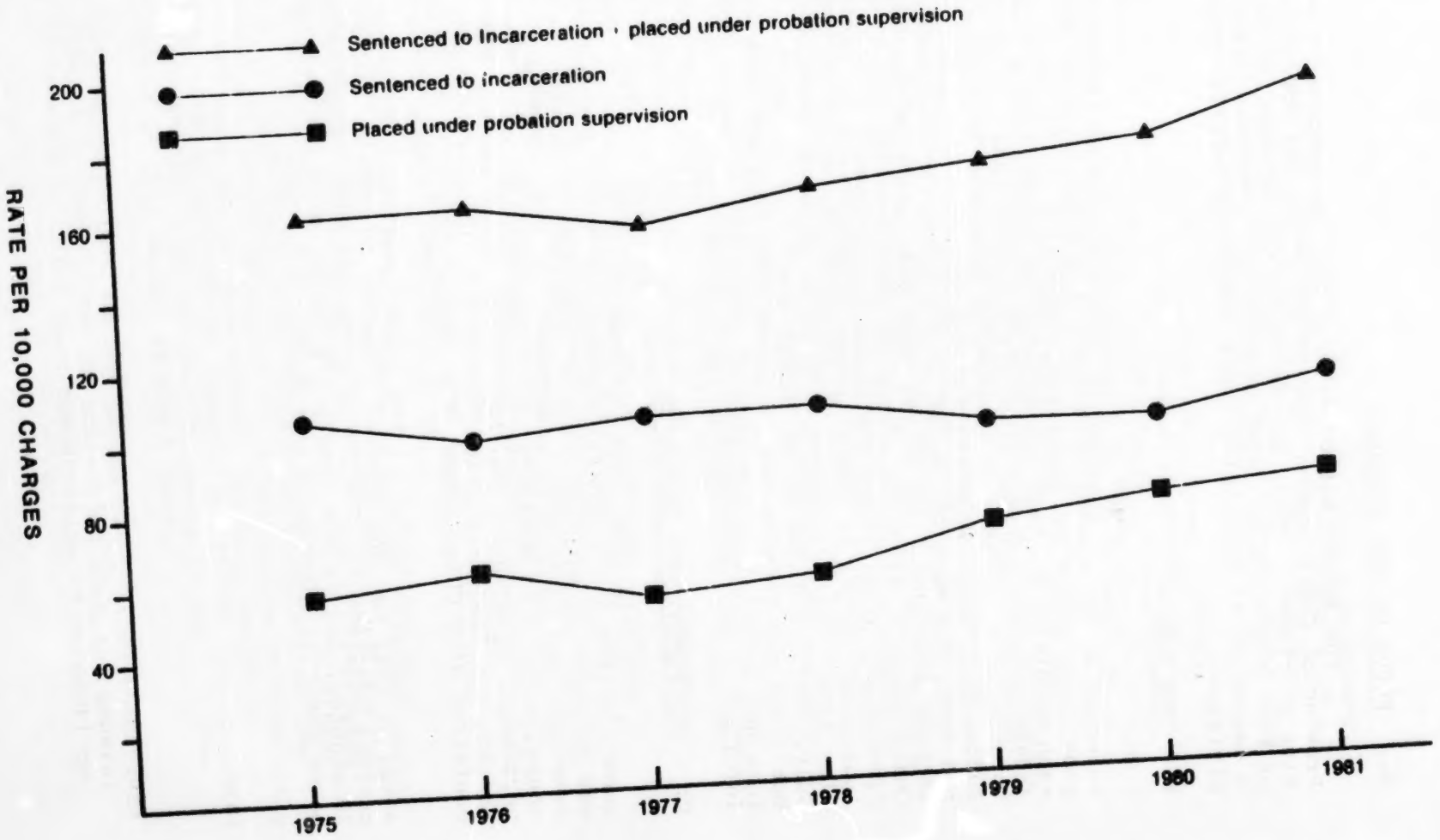
These three possible venues to a closer understanding of judges' employment of the alternatives programme were the focus of the present study: (1) What are the attitudes of the judges toward the alternatives programmes, taking into consideration their stated beliefs in the aims of sentencing generally, the aims of the various programmes and in terms of the self-perception of their own views on sentencing?

(2) What factors of the offender and his offence are considered for the alternative programmes, for incarceration, for holding in custody, for sentencing generally? What other influences enter in, e.g., the Crown's recommendations, other judges' opinions, the views of the media/press, pre-sentencing reports? If alternatives are available, are they used, how frequently? Who do the judges feel should administer the programme, the community, the police, Probation and Parole?

(3) Finally what are the judges' comments on existing alternatives programmes? How do the programmes work in their jurisdictions as far as the ease of implementation, effectiveness and feedback are concerned? What other programmes or further expansion would they like to see developed? What happens if there are no alternatives available for a particular case? In jurisdictions where there are no Driving While Impaired Programmes or Victim-Offender Reconciliation Programmes, for example, how does the judge sentence cases which would have been suitable for such dispositions?

Figure 1

SENTENCED INTAKE TO CORRECTIONAL SERVICES IN RATE PER 10,000 CHARGES RECEIVED IN PROVINCIAL COURTS



II METHODOLOGY

A. FOCUS OF THE RESEARCH

The survey was undertaken for the purpose of evaluating Provincial Court Judges' use of and attitudes towards alternative programmes. This was accomplished through the employment of both a structured questionnaire and a general interview of a sample of 47 Provincial Court Judges of Ontario (Criminal Division).

B. THE SAMPLE

A total of 60 Ontario Provincial Court Judges were selected in an attempt to achieve representation of specific geographic areas and population densities in Ontario. Within each subdivision, names were drawn at random from a list of judges provided through the office of the Chief Judge of Ontario, F.A. Hayes. In discussion with the Associate Chief Judge, H.A. Rice, substitution was provided for judges who had died, who were no longer on the bench or were unavailable. Letters describing the survey were sent out from the Associate Chief Judge's office to blocks of judges as the interviews progressed; after which the principal investigator contacted individual judges or their secretaries to arrange an interview date. All interviews took place between February and July, 1981. A total of 50 judges completed the questionnaire, but 3 did not receive the personal interview and were therefore not included in the general analysis, although their information was utilized for the general comments.

C. INSTRUMENT AND INTERVIEW

The data came from two sources: a structured 7 page questionnaire and a general interview. The first instrument was composed of a combination of questions requiring tick box responses and open ended responses. It was designed in consultation with Ministry of Correctional Services Research personnel, principally Ms. Marian Polonoski and Mr. Patrick Madden, and Associate Chief Judge, H.A. Rice, who also conferred with Chief Judge, F.A. Hayes.

Upon completion of the questionnaire, the judges were asked if they had any general comments to make on the alternatives programmes. The total interview time varied between 30 minutes, and in one case 2 1/2 hours, with the average being about 50 minutes to one hour.

III RESULTS

A. GENERAL CONSIDERATIONS

The findings will be presented in the following manner. First, results from the questionnaire will be reported with comparisons made to other relevant studies, then individual programmes will be discussed incorporating responses from both the questionnaire and the general comments.

Because of the questions selected, it was possible to make comparisons with two earlier studies completed on Canadian judges. The first is Sentencing as a Human Process, published in 1971 by John Hogarth; a study examining sentencing decision-making of 71 Ontario Court Magistrates. The second is an article entitled "Court Recommendations for the Placement and/or Psychological Treatment of Offenders Given an Institutional Sentence within the Province of British Columbia", by Margaret Ostrowski, et al, unpublished in 1979. Ostrowski employed questions similar to Hogarth in an examination of the relationship between judicial recommendation and actual outcome. For the present report, this allows a 15 year comparison of the judiciary in the first instance with Hogarth, and a contemporary comparison with British Columbia judges in the Ostrowski case; although in both of these studies alternative programmes were not the main focus of their attention. It should also be noted that direct comparisons were applicable with only a few of the questions.

A number of demographic factors characterizing the judges were investigated first. Judges were asked in what type of area they primarily presided, urban or rural. It had been indicated in the Hogarth study that there were interesting differences between urban and rural magistrates in their sentencing philosophies and actual decision-making (pg. 23). It was found that urban magistrates were less likely to use: (1) suspended sentence with probation, (2) suspended sentence without probation, (3) short-term ordinary imprisonment, or (4) reformatory sentences. Unfortunately in the present study most judges marked "urban" regardless of jurisdiction (79 percent), primarily because they seem to view their home base as urban regardless of population size.

Length of judicial experience is another possible factor in alternatives sentencing. The more experienced magistrates in Hogarth's study were more likely to believe in deterrence as an aim in sentencing and less likely to believe in either punishment or reformation. One would predict then that the more experienced judges would not use alternatives as frequently as their less experienced colleagues. The mean length of judicial experience reported by Hogarth in 1967-68 was 14 years; for the Ostrowski study in British Columbia, it was 9 years. For the judges in this study, it was 6 years.

Forty-seven percent of the judges categorized themselves as more liberal in their views on sentencing than the general public, as opposed to being more conservative (9 percent) or

holding about the same views (30 percent). Those who declined to categorize themselves thusly generally stated that it was either impossible to determine what the views of the general public were or that their own views depended upon the case (qualified, 15 percent).

In Hogarth's study, it was found that magistrates who had formed images of public opinion interpreted that image to be punitive and one which would like the courts to be sterner with offenders (pg.197). This suggests, according to Hogarth, that to the extent public opinion influences sentencing, it would be in the direction of more severe sentences. And in fact when the magistrates were asked what they felt the majority of the people in the community thought of probation, 41 percent felt the public saw probation as "getting off" or unwarranted "leniency".

There is some empirical evidence to substantiate this viewpoint. In one study of 603 citizens in Pennsylvania it was found that the public's view of the sentence to be assigned various offences was significantly more harsh than time served for the actual offences described (Blumstein and Cohen, 1980).

Judges in the present study were asked to indicate what they themselves saw as the aims of sentencing in general. A comparison of purpose can be made in Table 1, with Hogarth's Ontario magistrates responses 15 years ago, and Ostrowski's British Columbia judges in 1978.

TABLE 1

AIMS OF SENTENCING

	MINISTRY STUDY (usually or always important)	HOGARTH (very or quite important)	OSTROWSKI (always a factor)
	% Listing	% Listing	% Listing
Reformation	73	65	43
General Deterrence	66	42	52
Individual Deterrence	79	34	59
Incapacitation	21	24	9
Compensation for victim	62	0	7
Punishment	30	14	17

Responses are not directly comparable because of differences in category labels but it can be seen that reformation is second most frequently listed after individual deterrence in the Ministry study, whereas it was first in the Hogarth study. However, even if viewed as most often important, judges in the Ministry's general interview stated that there would be many cases where such an aim would not be appropriate because of the nature of the crime, i.e. a high profile rape

or assault case would be less likely to receive a sentence like probation with treatment conditions because of the community's concern (see page 19).

Individual deterrence, most frequent with 79 percent of the judges indicating it as "usually" or "always" important (compared to Hogarth's 34 percent), may be a reflection of increased consideration of recidivism rates and a trend away from the reformation (rehabilitation) philosophy. Rehabilitation does not seem "to work" in terms of individual offender's re-offence rates. This interpretation might apply as well to the increase from 14 percent of the magistrates in Hogarth's study (completed in 1966) to 30 percent of the judges in the Ministry's study indicating punishment as an important aim of sentencing. "Punishment corrects" appears to be more a belief now. If crime is perceived to be on the increase, particularly violent crime, the judiciary, as a reflection of the public concern, will feel the need to control it and individual deterrence rather than rehabilitation makes sense. With alternatives viewed as lenient sentences, closely linked to rehabilitation and reformation, more incarceration terms might be predicted in times of public concern over crime rates.

In an open-ended question, judges were asked to list characteristics of the offender and his offence considered when sentencing an individual to incarceration. From the responses shown in Table 2, the dual concerns of recidivism (offender characteristics #1 and #4) and public safety (offender characteristics #3; offence characteristics #2 and #6), appear primary considerations. Therefore the repeating offender or dangerous offender is not likely to receive an alternatives disposition such as a CSO.

Primary considerations for sentencing to incarceration appear to focus on the offence and past offences rather than the offender's individual characteristics. Prior criminal record and age (45 percent listing) and whether the offender is a recidivist (36 percent listing) are more important than his character, attitude and mental condition (19 percent listing). The nature of the offence i.e., degree of physical harm to public; prevalence of this type of offence in community (40 percent listing) and whether it is a serious, violent crime, where protection of the public is needed against the offence (49 percent listing) are important considerations for sentencing to incarceration.

Following from this question was one asking characteristics considered for holding an individual in pre-trial detention. Many of the judges interviewed do not perform the function of presiding over bail hearings, this is handled by Justices of the Peace; however, most of those who did respond indicated the primary or secondary ground factors stated in the Canadian Criminal Code in 457 subsection 7 were priority considerations.

TABLE 2

CONSIDERATIONS FOR INCARCERATION

OFFENDER CHARACTERISTICS	% Listing
1) Prior criminal record and age	45
2) Offender is a recidivist	36
3) No other alternative than jail because of seriousness of crime, for general deterrence	32
4) Dangerous	28
5) Character, attitude, mental condition	19
6) For sexual offenders of children	6

OFFENCE CHARACTERISTICS	% Listing
1) Serious, violent crime, protection of public needed against offence	49
2) Nature of offence, i.e. degree of physical harm to public; prevalence of this type of offence in community	40
3) Breach of trust offences	19
4) Damage to property	13
5) Weapons involvement	4

Section 457 (7) reads as follows:

> For the purpose of this section, the detention of an accused in custody is justified only on either of the following grounds, namely:
>
> a) On the primary ground that his detention is necessary to ensure his attendance in court in order to be dealt with according to the law; and
>
> b) On the secondary ground (the applicability of which shall be determined only in the event that and after it is determined that his detention is not justified on the primary ground referred to in paragraph (a)) that his detention is necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence or an interference with the administration of justice. R.S., c.C-34, S.457; R.S., c.2 (2nd supp.), s.5; 1974-75-76, c.93, S.47.

The breakdown of responses to the question are listed in Table 3.

This more narrowly focused question reflects the same concerns more generally stated in the first question related to incarceration considerations. A high proportion of judges (68 percent) explicitly stated secondary ground considerations

(a higher percentage than primary ground considerations - 45 percent), indicating judicial concerns for recidivism and public safety. These concerns could be postulated in terms of risk. Judges perceive themselves to be protectors of society, deterrers of crime (see page 38). They must determine the risk involved in releasing an individual back into the community as opposed to incarcerating him. The factors to be considered for holding in pre-trial detention versus release would reasonably be similar to ones considered for post-convictions versus release. Is the individual a recidivist, a danger? What factors in his background suggest he might be a good risk for probation or a CSO?

Responses to this second question are directly relevant for the bail supervision programme (see page 33). Judges are concerned with the public's safety and whether or not the accused will re-offend as much as they are about whether he will show up for trial. This suggests a smaller number of accused would be approved for the bail supervision programme than if reappearance only was the focal consideration.

TABLE 3

CHARACTERISTICS CONSIDERED FOR HOLDING IN CUSTODY

		% Listing
1)	Secondary Ground Considerations	68
2)	Primary Ground Considerations	45
Additional reasons given were:		
3)	Roots in community, background	23
4)	Type of Offence	21
5)	Previous record, age	19
6)	Existing bail conditions seriously violated	11
7)	Public policy considerations, offender already charged with offence	9
8)	Likelihood of incarceration, if convicted	6
9)	Young offenders likely to show remorse by time of sentencing	4
10)	Need for short shock	4
11)	Has employment or not	4

The results are consistent with a United States study on pretrial release in the District of Columbia (Roth and Wice, 1979). It was suggested from the findings that the seriousness of the crime or the charge was relied upon by the judges rather than the likelihood of the defendant's appearance

in court to determine release (page vii). This particular report recommended the use of pretrial release selection criteria which, if had been used in the cases examined, would have reduced both failure to appear and crime committed while on bail without any increase in jail populations.

While factors considered for alternative programmes were next asked and will be presented in the following section discussing specific programmes, the judges were also requested to rank the importance of offender and offence characteristics in sentencing generally, regardless of whether for incarceration or alternatives. These rankings are presented in Table 4, along with percentages for comparison from the Hogarth study.

TABLE 4

FACTORS IMPORTANT TO SENTENCING

	MINISTRY STUDY usually or always important	HOGARTH STUDY essential
OFFENDER CHARACTERISTICS	**% Listing**	**% Listing**
1) Family background	55	86
2) Prior criminal record	96	72
3) Previous employment	83	60
4) Marital status	28	37
5) Ties in community	60	34
6) Family commitments and responsibilities	79	0
7) Financial stability	35	0
8) Mental condition	91	27
9) Attitude to rehabilitation	94	27
10) Use of alcohol and drugs	71	17
OFFENCE CHARACTERISTICS		
1) Planning and premeditation	96	87
2) Degree of personal injury or violence	96	41
3) Weapons involvement	98	0
4) Damage or loss to property	68	17
5) The plea	40	0
6) Offender's present attitude to offence	95	11

Once again different labels for responding make direct comparisons problematic, but certainly the most striking differences relate to increased importance placed on mental condition from 1966 (from a 26 percent listing of magistrates as "essential" in Hogarth to a 91 percent listing of "usually or always" important in the Ministry study); attitude to rehabilitation (from 27 percent to 94 percent); use of alcohol and drugs (17 percent to 71 percent) for the offender characteristics. These three considerations have certainly become more focused upon since the late sixties. Similarly the offender's attitude toward his offence appears more important now to the judges (11 percent to 95 percent), as well as the degree of personal injury or violence (41 percent to 96 percent); again the concern for violent crime.

SUMMARY AND DISCUSSION OF FINDINGS FOR SECTION A

1) Individual deterrence is a more frequently stated aim of sentencing for the judges interviewed (79 percent) than reformation (73 percent). This represents a marked change from an earlier study on Ontario Magistrates in 1966, in which reformation and rehabilitation were stated more frequently to be important (65 percent) than individual deterrence (34 percent); but similar in comparison to a recent study of British Columbia judges in which individual and general deterrence were ranked over reformation.

An emphasis on deterrence seems more compatible with a concern for control of crime than for the rehabilitation of offenders. The implication this has for alternative programmes is intriguing. Perhaps judges continue to incarcerate those with past records of convictions, for serious or violent crime, but use alternatives for those perceived to need rehabilitation or control. These programmes require supervision in the community, supervision which might logically be viewed as reducing the risk of complete release.

2) Judges perceive themselves in the present study to be more liberal than the public in their own views on sentencing. And later in the report we will see that they in turn generally see themselves more conservative in their views on sentencing than the Ministry's Probation and Parole sector (see page 40). The first point will re-emerge in the general comments with reference to the judiciary's concern for just sentencing in high profile cases. Therefore judges may be willing to use alternatives, but consider both public policy considerations and whether or not they are effective as sentences as well.

3) Characteristics considered for incarceration focus on public safety (dangerousness of individual, serious violent crime) and recidivism. Rehabilitation is not viewed as a factor for incarceration.

4) Overall sentencing considerations, regardless of whether for incarceration or alternatives, reflect current societal concerns for drugs and alcohol abuse, as well as focus on the mental condition and attitude of the offender, and, the problem of violent crime.

Continuing from point (1), as judges become aware of problem areas in an offender, through psychiatric testimony and pre-sentence reports, they become aware of the increased risk of complete release even for a minor offender. Therefore in giving a disposition whose function is deemed to be rehabilitation or reformation of these problems, the judges may justify an alternative sentence with the additional purpose of maintaining some supervisory aspect, e.g. a CSO co-ordinator or probation officer. But this does "widen the net".

We turn to a consideration of the specific programmes. What factors are important for a decision to sentence to an alternative? How are the programmes functioning? Responses to more direct questioning about sentencing to an alternative will now be discussed.

B. SPECIFIC ALTERNATIVE PROGRAMMES

Before considering factors given by the judges as being important to sentencing an offender to an alternative and their comments on the programmes, some general statistics will be presented.

Given the finding that deterrence is a more frequently perceived aim of sentencing generally, it is of interest to see what the aims of the individual alternative programmes were for the judges (see Table 5).

TABLE 5

AIMS OF SPECIFIC PROGRAMMES

	CSO'S % Listing	PROBATION % Listing	RESTITUTION % Listing	VORP % Listing
Reformation/ rehabilitation	89	85	53	53
General deterrence	15	13	17	11
Individual deterrence	36	40	40	34
Incarceration	4	6	0	0
Compensation	23	15	70	32
Punishment	17	23	19	9

Here it appears that Community Service Orders and Probation are perceived similarly as rehabilitative/reformative in purpose. Even Restitution and Victim-Offender Reconciliation Programmes (VORP) are more frequently indicated as reformative than as an individual deterrent. Therefore the purpose as usually conceived for these programmes has not shifted to one of deterrence.

To gain some conception of the actual usage of the programmes, judges were asked to indicate if they used specific programmes listed (see Table 6).

TABLE 6

PROGRAMMES USED

	% Listing
Community Service Order	94
Restitution	94
Victim-Offender Reconciliation Programme	28
Employment	21
Driving While Impaired	45
Drug/alcohol	92
Psychiatric	92
Community Resource Centres	53

As can be seen, the Community Service Order Programme appears to be used by as high a proportion of judges as the older more established restitution procedures (94 percent listing). And although specific alternative programmes do not exist for psychiatric needs, psychiatric treatment is sought for by as a high a proportion of judges as the drug/alcohol programmes (94 percent). Programmes such as VORP and Driving While Impaired (DWI) are only available in limited jurisdictions at present, which explains the lower percentage of judges indicating their usage.

Next, judges were asked how frequently they used some of the alternatives (see Table 7).

TABLE 7

HOW OFTEN SENTENCE IF AVAILABLE

	CSO'S % Listing	PROBATION % Listing	RESTITUTION % Listing	VORP % Listing	DWI % Listing
Never	2	-	-	57	40
Sometimes	60	-	30	26	19
Frequently	38	100	70	6	23
Not available	-	-	-	11	17

With actual frequency given, the picture becomes clarified. Although CSO's and restitution are used by the same proportion of judges, frequency of usage varies significantly, with the CSO's being employed "frequently" only 38 percent of the time. VORP programmes are "never" used by 57 percent of the judges. DWI programmes, although used "frequently" by 23 percent of the judges, are "never" or are "not available" for another 57 percent.

Next, the judges were asked to list the characteristics of the offender and his offence for specific programmes. This was done for Community Service Order, Probation, Victim-Offender Reconciliation Programmes (VORP), Restitution and Driving While Impaired Programmes (DWI). It was felt that in asking the judges to consider what they considered in sentencing to the alternatives, some insight into who gets streamed to the programmes might be articulated. We begin with a discussion of CSO's.

Community Service Orders

As referred to in the introduction, the Community Service Order Programme was originally intended as an alternative to incarceration. A two-year study recently completed on the twelve original pilot projects in Ontario (Polonoski, 1979, 1980, 1981; Hermann, 1981) indicated that low-risk offenders charged with non-serious criminality comprised the major proportion of CSO participants. In addition, there was little agreement found among the judiciary on the actual utilization of the option in terms not only of its function, whether an alternative or not, but in the wide variation of assignments handed out by the judge. It is instructive at this point to list the factors given by the judges in the present study to examine the focus of their attention. (See Table 8.)

In Table 8, the primary considerations appear to be the ability and availability of the offender to do a CSO as recommended (50 percent listing), and the nature of the offence, i.e., if it is an offence, of non-violence, but sufficiently serious to warrant incarceration (38 percent listing).

The judges were asked what sentence they would have considered if the CSO option were unavailable. Most judges did not answer this question, but of those who did, jail was listed most frequently.

In the general comments part of the interview in the present study, a majority of the judges did not view CSO's as alternatives to incarceration. A notable exception to this was in one jurisdiction where it had been made explicit policy more forcefully by the senior judge that CSO's were to be implemented as alternatives. A record of CSO's was kept with the inception of the programme because there had been initial concern that the programme might become overloaded; there might be widely discrepant hours assigned to similar offences. This was not the case. It has proven to be highly successful.

TABLE 8

CHARACTERISTICS OF THE OFFENDER AND HIS OFFENCE CONSIDERED FOR CSO'S

	% Listing
OFFENDER:	
1) Ability (including physical health) and availability of offender to do work; only if good probability for success; if recommended by PSR.	50
2) Young, first offenders	28
3) Persons whom the court feels should acquire more respect for the community; those who are punishment-proof; for general rehabilitation	21
4) Professional or well adjusted offenders	13
5) Has job with family to support, but unable to pay fine	13
6) Offenders with special skills	11
7) If presentable in appearance, neat in grooming	2
OFFENCE:	
1) Offence of non-violence; but sufficiently serious to warrant incarceration; crimes with victims.	38
2) Where offence is minor and offender willing	21
3) Alcohol-related offences	4

The important factor contributing to its success, however, is that letters are completed and returned to a judge co-ordinator for all CSO's once terminated. It was also emphasized that CSO's are only considered if the Probation Officer doing the report recommends one. In examining the reports, it appears that in this particular jurisdiction, CSO's are most often given to youthful second offenders, after a suspended sentence plus probation was given the first time.

Most judges now only institute CSO's after an evaluation of feasibility by a Probation Officer, either because of experiences with unsuitable arrangements or an unwilling offender once he is out of the courtroom; or, because when first implemented, this was established as policy. Judges generally reserve CSO's for younger, willing offenders and take into consideration their attitude toward participation. One judge reserves CSO's for those who are "punishment-proof", i.e., those people who are on welfare charged with a minor offence, for whom the social impact of being sent to jail would do more harm than good. Another judge perceived that CSO's can be quite punishing and not rehabilitative. It can be "an onerous impingement of freedom", e.g., having the offender engage in unpleasant physical labour or having him spend his leisure time completely on fulfilling CSO hours.

There were some complaints that the full range of alternatives is not utilized for CSO's. Quite specific detail is preferred, i.e., who is to supervise, what is required, time allowed to completion. And since CSO's are proportionately few, relative to other dispositions, judges would like feedback on outcome. In smaller communities, this information seems to be handled on an informal basis.

One judge perceived CSO's as serving 2 purposes: (1) for those normally sent to prison, second or third time offenders who need to learn respect for public property; (2) also for those not normally sent to prison, but the judge feels will be helped by the experience.

Moreover it may not only be this second type of reasoning which may cause CSO's to 'widen the net', but influence from the 'correctional' end as well. In one jurisdiction a CSO co-ordinator has provided a checklist for assessing suitability for CSO's. Many of the criteria listed would seem to result in a filtering out of individuals who normally would be incarcerated. Such criteria as having stability of residence, "it is a great asset if the offender has a fixed residence, and not subject to drifting in and out of town", and nature of present offence, "a CSO is not normally appropriate where the offence is against persons (assault, sexual offences)", may well make the likelihood of successful completion high, but do little towards making the CSO a successful alternative in relieving overcrowded jails.

In any case, the CSO is viewed as rehabilitative, judges overwhelmingly focus on offender characteristics as opposed to offence characteristics when considering them, they normally only sentence to one if recommended, and they would prefer feedback on outcome.

Probation

Probation supervision has two functions: it is a legal means of keeping a check on probationers' behaviour and it provides officers with the opportunity of helping probationers modify their attitudes, upgrade their education and/or their work skills and to accept medical attention or special treatment if needed. It may be granted to an adult under the Criminal Code of Canada, Section 663. (2), R.S.C. 1970, c.C-34 as amended; or the Provincial Offences Act, R.S.O. 1980 c.400.

Once an offender has been granted probation, which may be for a period up to three years, the probationer must report at regular intervals to his officer. The officer in turn has the responsibility for seeing that the conditions, as laid down by the court, are fulfilled. Should a probationer willfully fail to comply with the conditions of the order, the officer may lay a formal charge against him.

Probation evolved from an increased concern over the individual offender. Being the 'mainstay' alternative for courts for years, there appears to be little ambiguity about its function with the judges interviewed, but some concern with its functioning. Judges were interested in knowing who would be best suited for probation. Responses to the question,'what characteristics of the offender and his offence would you consider when considering probation?', are given in Table 9.

Consistent with the goals of probation, judges consider young, first offenders (79 percent listing) and persons in need of counselling and/or treatment and/or control (47 percent listing) as primary considerations when considering probation.

For the alternative sentence, jail once again was the most frequently listed sentence of those who responded.

Two judges made reference to the recent Ministry report on probation outcome (Rogers, 1981). One judge was in agreement with the M.C.S. report on indicators for success with probationers and feels the 6 point approach for high risk considerations would be helpful, but at the same time, according to him, if he followed the criteria, not many offenders would be placed on probation. The six salient factors in Rogers' Recidivism Risk Scale are (1) mixes mainly with delinquents/criminals, (2) previously sentenced to probation or incarceration, (3) spends most of his leisure time aimlessly, (4) is under age 24, (5) male, (6) family often subsists only on social assistance.

TABLE 9

CHARACTERISTICS OF THE OFFENDER AND HIS OFFENCE FOR PROBATION

Offender:	% Listing
1) Young, first offenders	71
2) Persons requiring counselling and/or treatment and/or control (given consideration of background)	47
3) Attitude of offender	13
4) Repeaters where probation has met with success	9
5) Status in community, offenders who are family breadwinners, but cannot afford to pay a fine and are unable to work.	6
6) All offenders.	4

Offence:	
1) Non-violent offences or minor ones not requiring incarceration.	32
2) Recommendation by PSR; if not contrary to public interest.	15
3) Needs of community met, considerations of public concern over offence	4

It was suggested in the report that the scale could be used not only for research purposes, but as a tool for probation officers during the initial assessment process in classifying probationers to various levels of supervision (Rogers, 1981: 13).

There are other problems perceived by the judges as well, in the functioning of probation. When operating in outlying courts, some judges, for example, are disturbed by the practice of placing again on probation those who have already breached. In addition, too many breaches are failing because of failure to identify that person as the one originally placed on the probation order. Some judges feel the Criminal Code should be changed to include a presumption of identity clause, i.e., the evidence is considered sufficient if the accused before the court has the same name as that on the probation order, where there is lack of evidence to the contrary.

One judge has a file on his own probation cases. He has the probationer report at 2,3 and 6 month intervals with a Probation Officer for a progress report. He meets with them informally in his chambers. His reasoning is that this acts as a deterrent, and allows the offender "to feel the judge cares". There are now 150 cases in his follow-up. Other judges stated that they would be interested in general statistics on probation outcome, relating type of offender to success (these judges were referred to the Rogers' report); a significant minority, however, wanted feedback information on their own probation cases. A compromise or middle position was stated by one judge who said he would like information on the general statistics for his area, including number of applications for breaches as well as actual breaches. As it stands now, the judge only receives negative feedback from those who breach, no indication of successes.

Many judges expressed the feeling that probation is viewed by the public as a lenient action on the part of the court (similar to Hogarth's magistrates), which often affects sentencing in cases of high profile. Judges see themselves as being more liberal than the general public on sentencing (see page 5), and would often consider probation as a sentence, but are wary of public indignation.

The majority of judges see probation as rehabilitative and some expressed the opinion that therefore, short term probation is of little value for rehabilitative purposes. Although many judges were also aware that short term probation is more likely to result in lower recidivism rates because shorter supervision means reduced likelihood of detection. These same judges feel that there is little point in just placing the offender on "good behaviour" or "keep the peace" requirements only; they generally place many conditions on offenders, tailoring the order to individual "needs". But some kind of screening filter is needed if the judge is to determine what type of programme is best for which type of offender. "There needs to be interplay between the two systems."

Probation in urban jurisdictions was often described as meaningless because there can be no real supervision, no real direction when the Probation Officer is overloaded and conditions not enforced. In rural areas, the individual is easier to keep track of; also the community knows who is on probation so there is additional public pressure at work for the probationer to meet the conditions.

One judge stated he would like to see the Probation Officer return to an officer of the court role for closer rapport with the judges. Many did express the feeling that informal "chit chat" with Probation Officers would be of value, although it was recognized that there simply was not time in reality to achieve this informal level of discussion.

Another judge sees the role of the Probation Officer as that of a counselor in many cases, someone to talk to. Such a role would be particularly helpful, he felt, to elderly shoplifters and offenders. This function could also be directed toward supervision of borderline offenders, e.g., those in the dull-normal range of mental functioning who are repeat offenders, but for whom jail is merely warehousing and not a deterrent. However, given the fact that elderly criminals and borderline offenders represent minority sub groups, this might be a more appropriate role for volunteers to assume.

In conclusion, probation, as with CSO's, is viewed as rehabilitative, the individual offender is focused on when considering it as a sentence, there is concern about who should be placed on probation, and there is interest once again in outcome.

Victim-Offender Reconciliation Programmes

The Victim-Offender Reconciliation Programmes bring together the victim and offender to work out restitution matters or hours of work to compensate the victim in property damage offences. When this study was first initiated, there were very few VORP programmes in the province, about seven 'official' ones established, but with greater interest in this type approach by the government (the Victim has become a participant of concern), more have been created. Variations on the theme include a programme in one jurisdiction for shoplifters and in another for vandalism more generally. Both of these latter arrangements involve sessions with the police discussing the consequences of the crime.

Responses to the question,'what characteristics of the offenders and his offence would you consider for VORP?' are listed in Table 10.

From the responses given, the judges obviously feel the motivation of the offender (28 percent listing) and the willingness of the victim to participate (11 percent listing) are primary considerations for VORP. This is understandable from the perspective that the trial process is an adversarial one and therefore conciliatory actions are somewhat outside the purview of a court whose purpose is to mete out just punishment for the crime. It is not a confrontation that can be ordered.

The alternative sentence given most frequently by judges who responded was probation.

Although interest in VORP has risen, there are real problems seen by the judges in instituting the programmes. Many judges in large urban areas view VORP with skepticism. They question the motivation of the offender in participating. They question the victim's willingness to confront the offender. They question the manipulation of the "supervisor/ mediator" in the proceedings, especially a volunteer, whose enthusiasm and desire for successful confrontation may coerce participants. Where the programme is functioning, however, judges seem happy with it. On the other hand, even judges in these areas tend to qualify their statements by saying VORP probably works best in a smaller community setting.

Most judges agree that VORP, prior to disposition, is best and best with juveniles. It is viewed as beneficial to the offender rather than the victim, however. Although both the victim and offender's motivation and willingness are said to be critical to examine.

Several judges felt that VORP was quite limited in application, primarily to a few particular cases of certain property offences with youthful offenders. One judge said he did not like the structure of such programmes as VORP, run by "do-gooders". He himself probes offenders to determine if reconciliation is appropriate. Privatization of these programmes is "fraught with peril". Another judge said where it can work, it can do so (preferably) without a structured programme, by having a Probation Officer arrange through a Probation Order.

VORP is one programme, however, which most of the judges seem to feel would be most successfully administered by community volunteers, if supervised by trained personnel, such as Probation Officers.

To conclude this section, it is suggested that VORP remains an unproven alternative programme at this stage. It exists in a few jurisdictions and appears successful, but is perceived as limited in applicability, and where not established, its viability is questioned. It is categorized as primarily rehabilitative, although a third of the judges also feel it serves as an individual deterrent. Here again feedback on outcome would help establish the programme's credibility.

TABLE 10

CHARACTERISTICS OF THE OFFENDER AND HIS OFFENCE FOR VICTIM-OFFENDER RECONCILIATION PROGRAMMES

	% Listing
Offender:	
1) Persons who indicate a desire to make reparation; wipe slate clean.	28
2) Willingness of victim to participate.	11
3) Persons with ability to get along with others; ability to work; as assessed by PSR.	9
4) Age (generally young).	5
5) Absence of serious record.	4
6) To allow individual to become aware of harm done through the VORP process.	4
7) Educational level.	2
Offence:	
1) Personal property damage offence (non-violent).	9
2) Minor offences.	9
3) Thefts where goods not recovered and direct restitution not possible.	4

Restitution

The restitution process is of course not a specially created alternative programme, but a long established component of sentencing. Reparation made by giving an equivalent amount of compensation for loss, damage, or injury caused was described by the judges as a mediating factor in sentencing; with judges using it as an indicator of correct attitude in considering the possibility of a lesser sentence to be assigned. Therefore, restitution may act to swing the balance from an incarcerative sentence to an alternative one. The characteristics of the offender and his offence listed for consideration are in Table 11.

The overwhelming consideration for the offender is whether or not he can afford to pay (68 percent listing). Secondarily, he must show remorse and willingness to make restitution (15 percent listing). The primary consideration for the offence is the degree and nature of loss (23 percent listing). These straightforward factors suggest there is no ambiguity about the function of restitution. If the offender can pay, is willing and the offence is appropriate, restitution can be implemented.

Probation was listed as the most frequent alternative sentence considered and probation/community administrators were viewed as best (98 percent of the judges indicating this).

In the general comments, one criticism of the actual implementation process was made. It was felt that Probation does not enforce restitution conditions very well. "Restitution which goes unpaid gives the criminal justice system a bad image." Several judges did not feel restitution should be under probation control at all. It was not viewed as a proper use of personnel or the department. One judge commented that he felt restitution was sometimes used in an attempt at "one-step" justice, where both criminal and civil aspects of a case are attempted. He feels restitution when defined as reparation of damages, should be a civil matter.

To repeat, the focus in restitution appears to be whether or not the individual can afford to pay; and, willingness to pay is taken as an indication of good faith. One final interesting point worth mention was made by one judge who stated he determines whether to use VORP or restitution by asking himself whether it is better for the victim to receive compensation or the state to receive the fine.

TABLE 11

CHARACTERISTICS OF THE OFFENDER AND HIS OFFENCE CONSIDERED FOR RESTITUTION

		% Listing
Offender:		
1)	Persons with ability to pay	68
2)	Accused must show remorse and willingness to make restitution (probation officer can help motivate)	15
3)	In cases where job exists	9
4)	All offenders (qualified by one judge by saying all cases which fit criteria should be treated civilly).	9
5)	Cases where victim is known.	6
6)	Prior record.	2
7)	Consideration of family commitments and other responsibilities.	2
Offence:		
1)	Degree and nature of loss.	23
2)	Property damage offences.	11
3)	Will order whenever reasonable if sufficient information is given.	9

Driving While Impaired Programmes

The Driving While Impaired Programmes are directed toward second or third offenders of impaired driving convictions. They have been clearly established as alternatives to incarceration to the otherwise cumpulsory minimum of 14 to 90 days in jail. Therefore these are cases in which the Crown does not produce evidence that the notification of an increased penalty (as required by Criminal Code S.592) was given to the offender. At the discretion of the court, the offenders may instead participate in a drinking/driving awareness programme as a condition of probation. The role of Probation and Parole is then that of monitoring and enforcing the probation order with course participation as a condition. A series of sessions is usually developed for the purpose of educating the offender on the problems and effects of alcohol. Failure to attend could result in a charge of willful failure (Canadian Criminal Code 666.1).

Characteristics considered for these programmes by the judges are listed in Table 12.

Again, along with the primary consideration for the extent of drinking of the offender (19 percent listing), the concern is for the ability and willingness of the person to take the programme (26 percent listing). In keeping with the alternatives purpose of the DWI programmes, many judges stated that offenders with more than one impaired or related offence would be considered for the programme.

Alternative sentences were felt not applicable or were not given for 79 percent of the judges, but fine and probation were listed as alternatives for those who did respond. Community administrators (private agencies) were thought best for the programme.

Several jurisdictions expressed interest in having a DWI programme established. There were 'satisfied' reports from areas which already have them.

One judge made an interesting observation on the consequences of impaired driving offences (quoted 26 percent of all Criminal Code cases as being DWI cases). He stated he felt offences were as serious as murder offences, and should be sentenced accordingly.

The problem is certainly a serious one. In Ontario in 1979 for example, there were 4,725,546 registered motor vehicle operators. During 1979, 1,891 persons were involved in fatal accidents in which 292 (15.4 percent) were found to be legally impaired. Another 251 persons (13.3 percent) had been drinking. In other words, of 1,891 traffic fatalities in Ontario in 1979, 543 (28.7 percent) were alcohol-related.

Studies elsewhere provide even more alarming statistics. In Michigan, for example, one study indicated 50 percent of all traffic deaths were alcohol-related. In Wisconsin, three out of five drivers killed had over .10 BAC (blood alcohol content) in one study.

TABLE 12

CHARACTERISTICS OF THE OFFENDER AND HIS OFFENCE CONSIDERED FOR DWI PROGRAMMES

	% Listing
Offender:	
1) Person ready and willing to take programme (and able to, i.e. health)	26
2) Extent of drinking (in need of treatment)	19
3) Attitude toward rehabilitation	9
4) Age	9
5) Family	4
6) Length at present job	2
7) Educational level	2
Offence:	
1) More than one impaired or related offence	17
Offender and Offence:	
1) If lives within 25 miles of programme and blew 155 mg/100 ml when tested (or more)	2
2) Would not use programme	6

The most comprehensive comments about DWI programmes came from the judge who created the first programme in Ontario.

The approval and co-operation of the Crown and Defence lawyers were gained initially and it was determined that the programme should be aimed toward second and third offenders. Basically in this format, a series of sessions are devoted to the educational rehabilitation of the offender. The stated goals were the reduction of recidivism and the evolution of a method for identifying alcoholics among the offenders. As a result of the project, in comparison with another control group of offenders in Thunder Bay, recidivism among DWI offenders in the programme was reduced 50 percent (North Bay: n=24, 16 percent recidivating; Thunder Bay: n=47, 33 percent recidivating[1]). It was discovered that the focus should be on the alcoholism of the drivers, not their driving.

In conclusion, from the survey, again, the willingness of the offender to participate appears a primary concern and there is some indication that it is thought of as a true alternative to incarceration, for the involvement of second and third offenders.

Because of time limitations, judges were not asked to list characteristics considered for other alternatives but their general comments were noted and are presented below.

T.A.'s/Intermittent Sentences/Short Shock

The Temporary Absence Programme in Ontario is another more established alternative, actually only a partial alternative. A judge may recommend that an offender be placed on a T.A., an application is made and the institution's staff T.A. Committee discuss and decide whether this is viable. A common T.A. programme allows the offender to work daily and return to the institution every night and for weekends. This is considered for those individuals attending school as well. The granting of T.A.'s is seen to serve not only rehabilitative purposes but to also offset institutionalization, allow the continuation of social contacts and reduce inmate bitterness and tension. Generally, under T.A. regulations, the offender pays a portion of his earnings to the institution to cover room and board, a portion may be saved for his release; he may receive cash for his own daily expenses and the rest might be sent to his wife.

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1 *Findings reproduced with permission of author L. Mark Poudrier from his doctoral thesis entitled, "Impaired Drivers: An Educational Alternative to Incarceration", Ontario Institute for Studies in Education, Toronto, 1978.*

A temporary absence from an institution for work or other reasons, like academic upgrading, is usually only granted to inmates who have not committed a crime involving violence, brutality or arson; have not trafficked in or are the users of drugs; do not have a history of alcoholism; have not committed a sexual offence, and have not escaped or attempted to escape custody.

Intermittent sentences are similarly employed where the offence is of a less serious nature and an accused is not judged as a high risk to society. It also allows the offender the opportunity for continuation of employment or education and financial support for his family. Section 663 (1) (c) establishes legitimation for the intermittent sentence (I.S.)

The use of I.S. has decreased in the last couple of years since a M.C.S. report pointed out a number of concerns with the programme, (Crispino and Carey, 1978). According to that report, the vast majority of intermittent sentences are served from Friday evenings until Monday mornings. Some of the concerns institutional staff have with regard to the I.S. is that it overloads institutions on weekends, and there is doubt that many offenders are not actually from a low risk category (page 5). These concerns were substantiated in the research report which found offenders selected for I.S. did not differ from the general jail population.

T.A.'s were not generally seen to be a deterrent by the judges in this survey because the programme seems to remove the "punishing element". This is especially true in the case of "rounders", (taken by the researcher to mean transients or lower socio-economic class individuals) who receive no contrast in lifestyle on a T.A. One offender told a judge that T.A.'s were great, he no longer had to pay any rent. The intermittent sentence, on the other hand, is definitely seen to be more of a deterrent by the judges. "A weekend in jail is more effective than checking in and out of a residence." Those placed on intermittent sentences most often serve the sentence on weekends in jail.

T.A.'s were thought to be most effective when lawyers take the time to arrange them, i.e. by preparing letters from employer, family. Intermittents are felt best for offenders with no previous offences and for certain offenders who have family to support and other responsibilities.

The main criticism of the T.A. was in the mechanics of running it; the lack of immediate response of corrections, such that the offender may lose his job. This received much criticism in one large urban jurisdiction. "The machinery must be streamlined." Several judges were adamant that they will continue to use the intermittent instead of the T.A. until T.A. is better administered.

One problem with the intermittent was that a change was seen needed in the Criminal Code such that whoever assumes control of the sentence (e.g., superintendent of the facility) can also terminate the I.S. if he receives information to support termination, i.e. if offender loses his job. By the same line of reasoning, judges should only recommend T.A.'s or I.S.'s because Corrections has the time to check actual feasibility. One judge questioned having to make Corrections refer back to the judge in cases of lost jobs and misconduct because of the "fluid dynamics", as he described, of the offender's situation and attitude. Judges (and Corrections) should believe in the professionalism of Corrections and allow them to take action on offenders.

Another aspect of the T.A. vs. I.S. choice is that if the offender fouls up on an I.S., the usual Criminal Code remedy is a breach of probation charge under 666 in the Criminal Code; whereas the T.A. can be cancelled and a straight sentence given. One judge would like to see this changed so that if there is a breach, the offender goes up on the original charge (662.4), not a breach; but Crowns seem reluctant to use this section. With the T.A. possessing more control as it now stands, individuals who are perceived to need more control and a more structured environment should receive them rather than an intermittent.

It is appreciated by most judges that the I.S. is a headache for custodial staff to administer, with drunks appearing on their doorstep Friday nights, overcrowding of existing facilities, etc., but they also see it as an effective penalty which they will not be swayed from employing simply because of these drawbacks. One judge, however, feels neither the I.S. nor the T.A. is an appropriate alternative because the offender is first told he must be incarcerated and the court turns around and recommends placement on a T.A. or an I.S. The judge feels the offender then believes he is being "let off" easy for his offence.

Judges in smaller communities indicated they are often advised by the superintendent of the institution with regard to T.A. and intermittent feasibility, in keeping with the more informal network of communications established in these areas.

Several judges felt short shock sentences, in which the offender received a 2 or 3 day jail sentence, to be effective sentences. One judge said he felt short shock was effective, but he did not use it because of the sentencing principles set down for young first offenders.

And again, judges stated if they knew the outcome of placing individuals on each of these different sentences, the T.A., the intermittent, short shock, the information would help in their sentencing decisions.

Fine Option

The Fine Option Programme as conceptualized by M.O.C.S. would be an option provided in cases where the offender could not afford to pay a fine. Rather than sending the individual to jail, which has been the usual meaning of the term 'fine-option', he could be placed on conditions similar to a C.S.O. to work off his fine. There has been enabling legislation provided for this in Section 68 of the Provincial Offences Act R.S.O. 1980, C.400:

> The Lieutenant Governor in Council may make regulations establishing a programme to permit the payment of fines by means of credits for work performed, and, for the purpose and intent restricting the generality of the foregoing may
> (a) prescribe classes of work and the conditions under which they are to be performed;
> (b) prescribe a system of credits;
> (c) provide for any matter necessary for the effective administration of the programme, and any regulation may limit its application to any part or parts of Ontario.

Since this has not yet been officially implemented, most judges surveyed initially thought the fine/jail option was being discussed. When clarified, most judges agreed that this was a reasonable approach to employ as well as a just one. As opposed to VORP, fine-option seemed worthwhile to them because it has the positive function of a more quantifiable participation. Judges had their own ideas of how it might work. "If the individual cannot afford a fine, then he can receive further training for an employable position."

Another judge suggested a rather innovative variation to fine-option. He recommended the use of "work stamps" for offenders who cannot afford to pay a fine. The offender would register with an agency, become employed, and return to the agency to receive his credits or stamps toward the fine.

Alcohol/Drug/Psychiatric Treatment

The majority of judges feel they ought to be able to recommend treatment for incarcerates and probationers when recommended to them by experts, i.e. psychologists, psychiatrists. However, they then think corrections can best evaluate what programme and where. But the judges do want to know what treatment programmes are available, in what institution, how effective they are, and, how realistic it is to recommend them in the disposition.

According to the British Columbia study mentioned earlier which examined judicial recommendations for treatment and placement of offenders, when the recommendation was for psychological treatment, it was followed at least 50 percent of the time. Very specific recommendations were not carried out in the

majority of cases (page 26). For correctional placement, follow-through depended on which institution was recommended. Finally, a majority of recommendations were for those under 24.

It would be of interest to do a similar study in Ontario. Judges here expressed concern that their recommendations appear to be ignored at times. The typical example given was one in which the judge recommends an offender for treatment in an institutional setting, such as in OCI or GATU and the individual is not sent there. This kind of placement often results in the offender applying for a transfer to a Community Resource Centre after 3 or 4 weeks because he is not receiving the treatment "the judge said I should get". Judges feel that when a recommendation is not followed, for whatever reason, i.e. offender refused treatment or was not available, the trial judge should be informed.

When asked specifically in the questionnaire if they felt they should be able to recommend a specific treatment programme as part of their disposition for incarceration, 81 percent were uncertain. When asked to explain their answers, the following results were recorded.

TABLE 13

EXPLANATIONS FOR RECOMMENDING OR NOT RECOMMENDING TREATMENT IN SENTENCE FOR INCARCERATION

		% Listing
1)	Should be able to direct offender to programme if he needs it (if recommended by expert)	49
2)	If pre-sentence report recommends, evidence suggests or enough information available	9
3)	Drug and alcohol addiction in offenders should receive mandatory treatment	6
4)	For job training (social skills)	2
1)	Not jurisdiction of court; not enough information given usually; need feedback before this will become reality	17

The last response explaining why the judges did not recommend treatment is similar to the one given by the B.C. judges when they responded that they infrequently or never made recommendations (page 31). The general thrust being that making recommendations of this nature is outside judicial "responsibility and expertise". The judge does not have available to him the continuing input corrections can obtain.

For those judges who do recommend treatment, the recommendations reflect considerations of the offender's characteristics, not the offence. Treatment is after all based on a medical model framework, which views the offender in "need of treatment" to correct some pathology. One judge commented that offenders in need of treatment fall into an overlapping area of both the mental health process and the criminal justice process, and the question is, which process should deal with them? He feels what we basically do is recycle them; they are charged, institutionalized, released, release does not work, and they are re-institutionalized - a costly business.

As far as practical concerns, judges interviewed mentioned the overwhelming problem of alcohol and drug offenders and what should be done with them. One judge noted that if alcohol/drug cases were eliminated, two-thirds of the judges in his jurisdiction would be not working. These offences comprise the bulk of difficult cases to deal with. Judges in a few jurisdictions praised specific therapy programmes, one a 7-week alcohol therapy programme through A.A.

To conclude, judges are highly concerned about this area in administering justice. They want to know if their recommendations are followed through, they want to know what treatment programmes are available in the community and corrections, they want input about whether the offender should be treated (psychiatric recommendations, PSR reports), and feedback on whether he received recommended treatment or not.

Work Programmes for Incarcerated and Probationers

Work programmes as a built-in element for probationers and incarcerates generally appear to have the approval of the judges interviewed. No matter in which stream they function, the programmes offer something more than simple warehousing. For probation, they allow employment, job training and opportunity to demonstrate proper attitude. In the institutional setting, they serve similar functions; even in the most secure confinement, they provide productive use of sentence time. Larger scale work projects are thought to provide the structure and discipline many inmates need.

Work camps can be one solution. OUTREACH was mentioned as an example of a successful camp. Another mentioned a programme modelled after Portage in Quebec would be useful here in Ontario. This is apparently similar to the Synanon Programme in the States directed toward helping alcoholics. The work camp is run by former inmates and is allegedly more successful than A.A. because it completely removes the individual from the environment which originally contributed to the problem.

Another judge suggested work programmes created and developed by psychologists would be of value. Camps which place an emphasis on structure, discipline; equivalent to a military camp but with the goal of motivating the offender to reconstruct his lifestyle.

Bail Supervision

If the court feels a monetary or security bail condition is warranted, but the accused or his/her family lacks the resources necessary to insure release, bail supervision may be an alternative to incarcerating the person. It was designed as a non-monetary form of conditional release involving a court order with a reporting schedule for the accused. Liaison with family, school, employer, and community agencies may be a condition of the release order, or it can be worked out between the accused and the bail worker. The goal is to maximize the accused's opportunities for community functioning while remaining legally accountable to the court. It continues until a final disposition has been reached by the court. If the accused violates the release conditions, a charge may be laid and bail withdrawn.

The bail supervision programmes are administered by various private agencies in the community under contractual agreement with the Ministry of Correctional Services' local probation/parole officers throughout Ontario. The impetus being the very real problem of jail overcrowding caused in part by the increasing number of short-term inmates, many of whom have release conditions already set by the court. Earlier studies have indicated that a small percentage of those remanded in custody were charged with violent offences (Stanley, 1979) and that a large proportion was being released without having been sentenced to terms of incarceration (Madden, 1978). Another argument for the programme has been the suggestion that those going to trial while in custody are more likely to receive convictions and more severe dispositions than those who are free before the trial. There has been some experimental evidence to support their hypothesis (Koza and Doob, 1975).

Comparatively recently, the Supreme Court of Ontario has been substituting bail supervision for one or more sureties. Reception to the idea seems favourable; in four out of seven cases in which the bail project was involved in March 1982, bail supervision was given.

An M.C.S. study completed on four pilot bail supervision programmes in Ontario (Madden, Carey, Ardron, 1980) indicated desired impact on reducing remand admissions. However, less than half those placed on supervision were categorized as completely successful, and there was a 22% fail-to-appear rate (p.23). Over one-fifth had to be incarcerated before the initial charges were dealt with.

It is predicted that in 1981-82, about 600 people will be placed on bail supervision in Ontario. This is taken as an optimistic indication that the programme will emerge as a successful true alternative to incarceration (Mahaffy, 1981:65).

However, most judges interviewed think the programme is suitable for charges of minor offences only and was therefore limited in application. Forty-five percent of the judges responding to the question, "Which agency should administer bail under supervision?", thought community agencies should be administrators; as opposed to 26 percent for probation and 21 percent for police.

One argument offered for police supervision of bail release was that the offender too often sees the police as a buffer between freedom and jail, as "brutal aggressors of society", as described by the respondent, while they should view them as protectors of society. Another line of thinking was represented by a judge who was <u>against</u> privatization of bail supervision with community agencies because he felt the community should not get involved at that point.

A more general comment made was that consideration should be given to the possibility that bail supervision programmes are proving to be stepping stones to jail rather than away. Legislation such as the Bail Reform Act (1972) actually tends to create a whole new criminal population, i.e. through failure to appear, breaches, more individuals are sent to jail; in fact, these offences provide the largest category of offences. The costs involved are incredible, warrants are filed, crowded court dockets result, in other words, a perpetuation of criminal justice "business", but not criminal "justice".

The bail supervision programme is inevitably affected by the public's view of release on bail (as well as the offender's view), especially in cases evoking the public's sympathy or public outrage. Just as with other alternatives programmes, bail is seen as a lenient treatment generally for minor offences, and therefore in many ways, the fact that it is supervised is without significance to the public. As a consequence, the expected function of the programme, to release those who might not normally have been released, is restricted because of the public's perception of injustice if an accused is released who is charged with a serious offence, as well as because of their concern about safety and protection from this individual.

Therefore again we see that the public's perception of justice may have an effect on alternatives implementation. No doubt the community would not object to a young first offender charged with a minor offence being released on bail supervision, but an older second offender charged with something slightly more serious would most likely have a different impact, especially if publicized in the media.

Community Resource Centres

Community Resource Centres provide a live-in situation in the community from which offenders can make the transition back into society by working or attending educational upgrading courses while serving their sentences. They are located in rural as well as urban areas, several are bilingual, some are established and run by native persons and three are for women offenders.

Residents earning an income pay a maximum of $42.00 per week for room and board. In this way, they are contributing to the community by paying taxes, supporting their families and in some instances making restitution to the victim of their offences.

Applications for Centre placement may be made by the inmate or correctional institutional staff may recommend to them that they apply. The assessment committee generally will not recommend a person who has committed a crime of violence or arson or an assaultive sexual offence. Offenders facing further charges are usually required to have them dealt with before being accepted into the programme.

Those living at the Centres work or attend a vocational training programme in the community and return to the centre each evening. Meals are generally communal, with the residents sharing many of the chores. Applications can be made for weekend leave which must be approved by both CRC staff and the superintendent of the parent institution. There are presently 28 CRC's in operation in Ontario in the following locations:

Barrie
Belleville
Brampton
Brantford
Brockville
Dundas
Hamilton
Kingston
Kitchener
London (2)
Oshawa
Ottawa (4)
Peterborough
Pickering
Red Lake
Sudbury
Timmins
Toronto (5)
Thunder Bay (2)

Comments from the judges concerning CRC's were infrequent but positive. They were interested in having more established, especially for juveniles (see section on Juvenile Offenders). Two arguments were presented for their functioning. By having a transition between prison and the community, costs for maintaining an offender are reduced, e.g., the offender helps defray operating expenses, security guards are unneeded, etc. Also by using the residences for juveniles or first offenders instead of reformatories, cost for these individuals never reach the levels they would have if the offenders had been housed in reformatories. In addition it serves to keep this category of 'vulnerable' offenders from the more hard core institutional population. Once again, public policy concerns were seen to govern the placement to some extent. Residents living near a CRC would undoubtedly voice objections or concern about having an individual convicted of a crime of violence housed in their area. But as initially described, CRC screening criteria regulates admission in this respect.

C. ADDITIONAL PROGRAMMES

While one of the questions asked in the general comments part of the interview was "What additional programmes would you like to see implemented or developed?", response to this was quite low because of the time taken in discussing existing programmes, problems of sentencing, etc. Therefore, to conclude the section on alternative programmes, reference will be made to a recent study done on sentencing by the Solicitor-General's Research Department. For the portion of the study completed on Ontario judges, results to the question, "What additional resources and alternatives would you like to have available?" are reported below.

For Ottawa area judges, responses given were:

1) More direction from pre-sentence reports for selecting appropriate rehabilitative conditions.
2) Alcohol rehabilitation.
3) Lifeskills education.
4) Half-way houses - community service centres.
5) Psychiatric programmes.
6) Juvenile detention homes.
7) Residential treatment facilities.
8) More extensive personal probation counselling.
9) A security institution to deal with deviated personality problems.

In Sault Ste. Marie:

1) Driving While Impaired Programmes
2) Improved CSO's - better co-ordination
3) More money for programmes.
4) More money in directing youth and providing assistance immediate employment.

In London:

1) Better occupational training while in jail.
2) Strong and capable agency to assist accused in finding work when released. Pressure on unions to accept and find place for individuals.
3) Improve probation facilities.
4) Community homes for dependents and others
5) More for youthful offenders as in Waterloo region.
6) Would like to know what services are available.
7) More on-the-job training for the large number of persons whose lack of education and job skills place them in category of unemployed and unemployable.

In Toronto:

1) Prison with hard labour.
2) Training in basic life skills.
3) Unit for alcoholics to receive treatment and work in community.
4) House of Concord for girls.
5) Post-sentence progress reports for sentenced inmates.
6) Housing, education and employment services.
7) Detention Centres with creative educational facilities.
8) The option of being able to give a conditional or absolute discharge, plus a fine (but without a conviction).[1]

In keeping with the spirit of the first response for Toronto area judges, one judge in the present study elaborated a reform for the prison system based on having short sentences rather than the lengthy ones now in existence. It would be a punishing incarceration, i.e., no television or luxuries, little contact with the outside. He feels we should not make a prison a hospital or welfare state enterprise. Prisons should be organized so there is little possibility of riots, prisoners demanding their rights, but this is not to say that conditions would not be humane - spartan, but humane. "Prisoners should have conditions which are adequate for survival in good health." This judge not surprisingly stated he did not see reformation as a goal of incarceration.

Overall, however, the concern in the Solicitor-General's survey seems to be with the need for occupational training, for more half-way house type accommodations, and availability of counselling and treatment services. No mention of VORP alternatives, one mention of CSO improvement, one mention of DWI programmes. It appears the emphasis is on skills training and resocialization stages in corrections, "practical" alternatives.

D. JUVENILE OFFENDERS

This category of offenders needs a special section devoted to them because they were the most frequently referred to group in the interviews relative to alternatives programmes, drug/alcohol use, and how they can be dealt with generally.

One judge said he was aware of the lack of sense in sentencing younger offenders to lesser sentences than older, when in reality, the older offenders are probably nearing the end of their criminal careers. In any case, a frequently voiced concern was what to do with young offenders. More Community Resource Centres was one common suggestion. Those who judges would prefer not to incarcerate, but for whom they feel need more control than probation only offers, need some "in-between" arrangement for detention.

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1. *These findings are reproduced through the cooperation of Judge Guy Goulard, Director, Sentencing Project, Department of Justice, and Dr. Stan Divorski of the Ministry of the Solicitor General. The responses were taken from questionnaires administered at a judicial seminar, principally attended by recently appointed judges.*

The education of these juveniles is also seen as important. Both instruction in the area of the potential harms of alcohol, drugs, sex, as well as training for jobs, resocialization, interpersonal skills training.

Here feedback was the recurring request. Especially with the 16-20 year olds. What works? It was felt that they (the juveniles) should be kept away from the hard core population. Overnight or short shock is seen as effective in sentencing them, but "2 to 3 months could lose them completely". The general consensus seemed to be that the difficulty is often the Court of Appeal or general sentencing principles or even the public's sense of justice does not allow such lenient treatment. The first level of severity in sentencing attempted with juveniles is usually the suspended sentence or conditional discharge, then probation.

For the two perceived evils in Canada for one judge, (1) not producing enough, (2) not enough qualified people, apprenticeship programmes could be instituted for this age group, in both prison and the community. The example given was the John Howard Life Skills Programme.

One judge has a file on youthful offenders he has placed on various work programmes and has had them maintain contact. This judge established informal connections with a number of businessmen which allows him to place the juveniles in work without conflicts with unions. "If you give an individual a responsible position and he gives of himself, he will get something back."

E. CONCLUDING WITH THE JUDGES THEMSELVES

This section focuses on the judge's role in the process, their own statements about the difficulties they have in sentencing and general comments related to alternatives implementation.

For the most part, the judges interviewed did not see themselves as unchallenged authority. One judge described himself as a "brokerage officer" in human failure. The court deals with losers generally, he feels, and so programmes should be directed toward this population. Another judge stated he felt judges, in dealing continually with the 10 percent of the population who caused problems, often become cynical and hardened to those offenders. The judge's role is also seen to be that of an "arbiter" according to one judge, in the conventional sense. Another saw his role as a deterrer, not a punisher. One judge stated his primary function was to protect the public, but with the public questioning whether their being protected is worth the cost of housing and feeding individuals in prisons (not to mention governmental concerns), alternatives programmes have to be considered. It was suggested that the emphasis of alternatives should be on reduced recidivism rather than rehabilitation. This is in keeping with the earlier mention of an increased concern over the control of crime and deterrence of the individual offender.

INPUT was regarded as important to the judge in sentencing an offender to an alternatives programme. The more information about an individual, the better able the judge to direct him to an appropriate alternative. One question asked of the judges was how important were different sources of influence in sentencing? The responses are given in Table 14.

TABLE 14

SOURCES OF INFLUENCE

	Usually or Always Important
	% Listing
Crown recommendations	62
Pre-sentence Reports	89
Psychiatric Recommendations	70
Media/Press	2
Other Judges' Opinion	43
* Court of Appeal Decisions	38
* Defence Counsel Recommendations	25

* These 2 sources were added by individual judges themselves. It is therefore not justified to compare percentage levels with the sources above the line.

As can be noted, pre-sentence reports received an outstanding vote of confidence. PSR's were felt to be valid sources of information with the caution expressed by one judge that they might be weighted by the source giving input, i.e. family members of the offender were thought to be questionable. The attitude of the offender is viewed as an important factor in sentencing, as we have seen, and the PSR is thought to be useful in evaluating this. Another factor PSR's assess, according to one judge, is the dangerousness of the individual. The general consensus seems to be that individual cases need individual dispositions and PSR's provide information to arrive at these.

Psychiatric recommendations were mentioned as useful only where the individual is certifiably mentally ill. One judge could not understand why a psychiatrist requests a further 30 to 60 days remand for observation, when he then only sees the individual one and a half hours or more in that time. Communications seem problematic. There are difficulties outside of Toronto in getting assessments completed as well as confusion on the part of the psychiatrist doing them as to what he is to be assessing.

The Court of Appeals seems viewed by many of the judges interviewed to be "soft" on sentencing. The explanation given is that they do not have to deal with the same population or the same volume and do not therefore gain insight into recurring types of cases. Other provincial court judges, on the other hand, are respected for their opinions since they are dealing in the same sphere, at the same professional level.

Lastly, the media/press obviously are not viewed as particularly influencial. Indeed it was almost unanimously denounced by the judges as an influence, although several judges mentioned it was really their own source of information on crime rate and outcomes of some of their cases.

This is why feedback is so critical to the judge as well. First, because if there is no official feedback from corrections, then the judge will be influenced by available information; that provided by the media/press segment of the public, e.g. from headlines about increased crime rates.

"A judge is like a parent. You never know until you see what happens what will work. But, unlike the parent, judges never find out what works."

Feedback allows a judge to become "wiser". Judges need to evolve, to change their attitudes and perspectives as information on how "successful" they are in sentencing gets absorbed.

It is also critical that judges know the limitations and restrictions of correctional services, as for example mentioned with treatment recommendations. But more generally this could be true for information regarding individual institutions' functionings. In addition, the judges seemed interested in visiting the various institutions to learn how they operate, what they have to offer, who to contact. An annual review produced by the institutions was also mentioned as a helpful idea.

Another suggested mechanism for judicial information input was that of a MCS liaison. A "working liaison" is needed, not just someone to attend meetings in an official capacity, but a person with information; knowledge of the procedures and mechanisms of the process as basic as how classification schemes work, how "time-off" (remission) is calculated, what infringements cost the offender in prison. A "package" of programme descriptions should also be made available to judges, lawyers. A central location for the diffusion of information is needed.

It was expressed that MCS should become more involved with educational seminars for the judiciary. This could be a forum to allow a diffusion of information regarding alternatives programmes, studies on evaluation. Many of the judges expressed the belief that they are more conservative than MCS on sentencing and it is up to MCS to demonstrate the programmes are more effective than incarceration. One judge said he was 100% in favour of any alternative if it is at least as effective as incarceration, since it makes financial sense. "Information is what the judge needs."

A second recurring theme after input and feedback concerns, was the emphasis placed on urban/rural differences. Most judges first of all do not view themselves as serving rural areas even when they are located in smaller communities. They go out "on the line" to the outlying communities, but perceive themselves as based in urban settings.

It was stressed that geographic area is an important factor in sentencing and the use of alternatives. For example, one judge stated that an individual charged with incest in Toronto would probably receive a sentence of incarceration, while in the North he would probably receive a suspended sentence with probation. This relates once again to the public's perception of what is crime. These differences need to be kept in mind when planning programmes, many of which simply cannot be packaged as a standardized unit. DWI offenders may be quite a different population of offenders in London than those in North Bay and need quite different approaches to treatment/punishment.

Also the same programme may operate quite differently in various locations. Usually less resources are available in smaller communities and a more informal process involving phone calls, discussion amongst those involved, characterize functioning in such areas. A common perception is that alternatives become so much paper work in larger centres. A different kind of justice works and requires a different kind of alternatives' approach.

Lastly, a significant number of judges expressed general dissatisfaction with the current trend toward "privatization" of alternatives. This feeling seemed based first on the lack of professionalism and experience they perceive characterize community agencies. There was also a more basic questioning of the community in criminal justice functions; after all, they seem to be saying, that was the purpose for which the courts were created in the first place. It is not that they object to the obvious concern community volunteers and personnel have, as indicated in their involvement, but whether the community person would necessarily mete out justice in his interaction with offenders.

One judge expressed it this way, "the criminal justice process is serious business and I suspect that only people who are accountable should be used. How do you fire a volunteer? Or for that matter, how do you evaluate what they are doing in order to determine whether or not they should be fired?"

IV CONCLUSIONS

ALTERNATIVES AND JUDGES

The purpose of the survey was to investigate Provincial Court Judges' (Criminal Division) attitudes toward and use of alternative programmes. It was thought some understanding would emerge for why the use of alternatives does not appear to be reducing the numbers of offenders incarcerated. An assimilation of the findings may now provide some enlightenment to this question.

Drawing first on characteristics judges listed for considerations for incarceration or for holding in custody, we see that recidivism and public safety concerns are priority factors. These are framed by the judges primarily in terms of reference to the offence characteristics: the nature of the current offence, the past record of offences.

Contrasting with this focus are the characteristics considered for alternatives programmes. The overwhelming considerations listed by the judges are related to the individual characteristics of the offender himself: his attitude, his present socio-economic situation, his age. Analogous to this dichotomous responding are the responses in Hogarth's study comparing reasons listed for prison and probation (page 79):

TABLE 15

CONSIDERATIONS FOR PRISON/PROBATION (HOGARTH STUDY)

	% Listing
In Favour of Prison	
1. Type of offence	
All crimes of violence	64
All sex offences	34
All abuse of trust	22
All serious crimes against property	22
2. Criminal record	37
3. Likelihood of reconviction	28
In Favour of Probation	
1. For all who may benefit from probation	54
2. For first offenders only	17
3. For young offenders only	6
4. For young, first offenders only	17
5. For young, first offenders convicted of minor crimes	7

It has already been acknowledged by the judges that there is some consideration given to the perception of alternatives as lenient sentences. It may be that the judges themselves continue to categorize alternatives as sentences for which the offender's individual characteristics are considered as opposed to his offence characteristics, as a sentence for reformative purpose. Again from Hogarth, magistrates who gave greater weight to reformation as an aim in sentencing were more likely to emphasize the offender and his needs rather than his offence.

Examining the factors the judges themselves state they consider for the two different types of sentencing, this appears to be true in the Ministry study as well. Therefore with reformation in mind and crime control a current concern, a judge may sentence more individuals to alternatives. First, he now has detailed information available about individual offender needs. Therefore, a rehabilitation programme can be closely specified for those needs. In addition, these problems have the potential for future crime risk - mental disturbances, poor attitude, domestic turmoil, unemployment. Individuals for whom such information was not previously available become of interest through psychiatric reports and pre-sentence reports because of apparent individual deviance problems and the threat these represent to the public.

Yet the increased use of such information does but parallel the public's increased concern for the welfare of the offender. In the case of psychiatric reports, the concern is in terms of both treatment needs and determination of the motivating factors behind the crime. The latter appears particularly true for offenders of violent crime. Was the offender responsible for his actions or was he too disturbed to be culpable; is he fit to stand trial? Pre-sentence reports provide similar information for other individual problems such as domestic and financial instability, employment difficulties. The individual may be discovered to have a problem which may have contributed to the crime; what can be done to alleviate the problem which would alleviate the criminality, and just as importantly, how can we maintain a check on its alleviation?

If the hypothesis that alternatives are used primarily for rehabilitation and control is valid, and the evidence from the survey is certainly supportive of this kind of interpretation, then there are several implications for the concern over alternatives which are not functioning as alternatives. It may be in reality that alternative programmes can not be equated with the punitive nature of incarceration; that 140 hours of CSO work cannot fit into an equation with say, 10 days in jail, as the alternative. In that case, the programmes need to be reformulated. If, on the other hand, it is simply a matter of recasting the purpose of the programmes for the judges, then an explicit policy solution as was seen to work with the CSO programme in one jurisdiction may be the answer. This would probably have to be paired with a monitoring component which could be left informally in the purview of the judges themselves, by having a judge co-ordinator review alternatives dispositions.

A last more radical suggestion would be to change the administration of the programmes from 'probation' to 'corrections' more directly in order to alter the association made with probation. Having alternatives' clientele report back to corrections in a manner similar to temporary absence programme checking may place the whole enterprise in a more punitive context for all participants.

In any case, the survey has indicated that many Ontario provincial court judges perceive of alternatives to incarceration in a very different manner than they do incarceration itself. Therefore it should not be surprising that they do not use the two for similar cases. Unless there is an explicit effort to alter these perceptions, it is predicted that alternatives will continue to be used as offshoots of probation, for individuals perceived to be in need of rehabilitation and not considered dangerous nor likely to recidivate. For judges who reasonably view themselves as protectors of society and deterrers of crime, alternative programmes allow for further supervision and control beyond the courtroom. For those concerned with the rehabilitation of the offender, alternatives offer a wider range for individual help. But those offenders destined for prison are not likely to be those destined to the community in the present process, because judges as protectors of society, deterrers of crime, reformation-minded administrators of justice perceive the risk for public safety in terms of the offence as a more important consideration than the offender's needs. On the other hand, those same needs and other individual problems <u>are</u> considered for alternatives programmes.

It appears therefore that MCS should assume some responsibility is assisting the judiciary by telling how their sentences are actually carried out, and what exactly happens to the offenders they sentence. By researching recidivism rates of offenders placed on various alternative programmes, CSO's, DWI, Probation, VORP, bail supervision, compared with the outcome of those incarcerated in various levels of custody, TAP's, intermittents, CRC's, reformatories, penitentiaries, MCS can help clarify sentencing effectiveness for the judiciary. The form the dissemination of this information should take is an important consideration however. Judges do not generally have time to read statistical reports. A logical forum for presenting research findings, describing new programmes, etc. would be the already existent sentencing seminars held annually for the Ontario provincial court judges.

In addition, it is apparent there is a real need to have better communication between the judiciary and corrections on a day-to-day basis. The suggested idea of one of the judges for a permanent liaison office is strongly recommended. A position which would be held by both a judicial and a corrections representative would establish a link that is nonexistent at the moment. Only when the various components of the system work toward mutually understood goals can it truly become a justice system. That is of course the ideal consideration. But of equal practical consequence are the financial repercussions of a system which works as intended, with alternatives functioning as programmes to relieve the cost and overload of the incarcerative system.

REFERENCES

Blumstein, A. and Cohen, J., "Sentencing of Convicted Offenders: An Analysis of the Public's View", *Law and Society Review*, Vol. 14, 2, 1980.

Chan, J.B.L. and Ericson, R.V., "Decarceration and the Economy of Penal Reform", Centre of Criminology, University of Toronto, 1981.

Crispino, L. and Carey, C., "Intermittent Sentence: Process and Problems", Ministry of Correctional Services, Planning and Research Branch, 1978.

Hermann, S., "The Community Service Order Programme in Ontario: A One Year Follow-up", Ministry of Correctional Services, Planning and Research Branch, 1981.

Hogarth, J. , *Sentencing as a Human Process*, University of Toronto Press, Toronto 1971.

Koza, P. and Doob, A.N., "The Relationship of Pre-Trial Custody to the Outcome of a Trial", *Yale University Criminal Law Quarterly*, 1975, 17:4.

Madden, P.G., "A Description of Ontario's Jail Population", Ministry of Correctional Services, 1978.

Madden, P.G., Carey, C. and Ardron, D., "Pretrial Services in Ontario", Ministry of Correctional Services Report, Planning and Research Branch, Toronto, 1980.

Mahaffy, C., "Taking the Price Tag off Bail", *Correctional Options*, vol. 1, 1:63-65.

Ostrowski, M., Wolochow, M., Stevens, H., and Hogarth, J., "Court Recommendations for the Placement and/or Psychological Treatment of Offenders Given an Institutional Sentence within the Province of British Columbia", unpublished report, Vancouver, 1979.

Polonowski, M., "The Community Service Order Programme In Ontario:
1. A Description of Initial Cases, 1980.
2. Probationers' Perception of the Community Service Order", Ministry of Correctional Services Report, Planning and Research Branch, Toronto, 1980, 1980a.

Rogers, S., "Factors Related to Recidivism Among Adult Probationers in Ontario", Ministry of Correctional Services Report, Planning and Research Branch, Toronto, 1981.

Roth, J.A. and Wice, P.B., "Pretrial Release and Misconduct in the District of Columbia", *PROMIS publication*, National Institute of Justice, Washington, D.C., 1980.